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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,770	11/09/2001	Gary E. Ward	V00139.70050	9181

7590                    07/01/2003

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[REDACTED] EXAMINER

BASKAR, PADMAVATHI

[REDACTED] ART UNIT      [REDACTED] PAPER NUMBER

1645

DATE MAILED: 07/01/2003      |||

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/039,770	WARD ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Padmavathi v Baskar	1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7, 9, 14, 15, 17, 20, 23-26, 30, 31, 34, 35, 38 and 39 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-7, 9, 14-15, 17, 20, 23-26, 30, 31, 34-35 and 38-39 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**Election/Restrictions**

1. Applicant's preliminary amendment filed on 9/30/02 is acknowledged. Claims 8, 10-13, 16, 18, 19, 21, 22, 27-29, 32, 33, 36 and 37 have been canceled. New claims 38 and 39 have been entered. Claims 1-7, 9, 14-15, 17, 20, 23-26, 30, 31, 34-35 and 38-39 are pending in the application.
2. Restriction to one of the following groups of invention is required under 35 U.S.C. 121:
  - I. Claims 3-7 and 9 drawn to a nucleotide fragment of Toxoplasma apical membrane antigen (Tg AMA-1), recombinant vector, host cell and a transgenic animal classified in class 536, subclass 23.7.
  - II. Claims 1-2, 14-15, 23-26, 38 and 39 drawn to an isolated Toxoplasma apical membrane antigen (Tg AMA-1), a vaccine comprising said protein classified in class 424, subclass 273.1,
  - III. Claims 30-31 drawn to a method for treating Toxoplasma infection classified in class 514 subclass 2
  - IV. Claims 17 and 20 drawn to a method for immunizing a subject class 424 subclass 184.1
  - V. Claims 34-35 drawn to a method for reducing the likelihood of a Toxoplasma infection class 514 subclass 12
3. The inventions are distinct, each from the other because of the following reasons:  
Group I is directed to DNA which consists of nucleic acids, Groups II is directed to recombinant protein, made of amino acids. These products are different to each other

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structurally, biochemically and functionally and are drawn to patentably distinct inventions which have materially different physical and chemical properties and structures as represented by their divergent sequences.

Groups III-V are patentably different methods using different biological reagents such as protein, vaccine with adjuvant etc, different method steps that result in different outcome.

4. Invention II is related to invention III/IV/V as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the protein of Group II can be used in immunoaffinity chromatography methods for purifying antibodies and need not be used in the inventions III/IV/V.

5. Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, the literature and sequence searches required for each of the Groups are not required for another of the Groups, restriction for examination purposes as indicated is proper.

7. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padmavathi v Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on M-F (6:30A.M-4: 00 P.M.) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

P. Baskar Ph.D.  
6/25/03

*JGraser*  
JENNIFER E. GRASER  
PRIMARY EXAMINER  
6/26/03